



November 3, 2021

Via ECFS.

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street NE
Washington, DC 20554

Re: Ex Parte Presentation, *Establishing Emergency Connectivity Fund to Close the Homework Gap*, WC Docket No. 21-93; *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184

Dear Ms. Dortch:

On November 1-2, 2021, Elizabeth Laird and Cody Venzke of the Center for Democracy & Technology (CDT) met via videoconference with the following staff of the Federal Communications Commission:

- Monday, November 1, 2021: William Davenport, Jr., and Autin Bonner
- Tuesday, November 2, 2021: Gregory Watson

CDT applauds the ongoing efforts of the Commission and Congress to close the homework gap and champions additional efforts to connect students while protecting their privacy. In its meetings, CDT expressed concerns that schools are implementing invasive software to monitor students' activity online, often as a result of an overbroad interpretation of the "monitoring" provision of the Children's Internet Protection Act (CIPA). CDT urged the Commission to clarify the proper interpretation of CIPA's monitoring provision to ensure that students can be connected while protecting their privacy. The CDT participants used the attached slide deck in their presentation.

Student activity monitoring software permits schools unprecedented glimpses into students' lives, from measuring engagement in online learning to analyzing students' browsing habits and scanning their messages and documents. Overbroad, systematic monitoring of online activity can reveal sensitive information about students' personal lives, such as their sexual orientation, or cause a chilling effect on their free expression, political organizing, or discussion of sensitive issues such as mental health.

Recent research by CDT shared at the meeting¹ underscores the impact of student activity monitoring, especially on lower-income students and families:

- **Monitoring is widespread and used outside school hours.** In polling research conducted by CDT, 81 percent of teachers reported that their schools use student activity monitoring software. Of those teachers, only one in four reported that monitoring is limited to school hours. Seventy-one percent report that monitoring takes place on school-issued devices, while only 16 percent stated that monitoring also occurs on personal devices.
- **Monitoring disproportionately affects low-income students.** In interviews with CDT, technology leaders in school districts with wealthier student populations reported that their students are more likely to have access to personal devices, which are subject to less monitoring than school-issued devices.² In its polling research, CDT found that approximately two-thirds of rural, low-income, Hispanic, and African American students rely on school-issued devices and may consequently be disproportionately subject to student activity monitoring.
- **Monitoring chills student expression.** Six in ten students in CDT's polls agreed with the statement, "I do not share my true thoughts or ideas because I know what I do online is being monitored," and 80 percent report being "more careful about what I search online when I know what I do online is being monitored."
- **Parents and teachers are concerned about monitoring.** Although approximately two-thirds of teachers and parents believe that the benefits of student activity monitoring software outweigh its risks, they nonetheless have concerns about its use. Forty-seven percent of teachers and 51 percent of parents report concerns with monitoring software, such as the risk that LGBTQ+ students may be outed. Fifty-seven percent of teachers and 61 percent of parents were concerned that student activity monitoring could cause "long-term harm to students" if it is used for discipline or out of context.

In the meetings, CDT underscored that CIPA's "monitoring" provision may be motivating overbroad surveillance of students' lives. Among other things, CIPA requires schools receiving funds under the Commission's E-Rate program to certify that they are "enforcing a policy of Internet safety for minors that includes monitoring the online activities of minors."³ In interviews with CDT, school district technology leaders reported that they have adopted monitoring software to comply with CIPA's perceived requirements.⁴

¹ Center for Democracy & Technology, Student Activity Monitoring Software: Research Insights and Recommendations 2 (2021), available at <https://cdt.org/insights/student-activity-monitoring-software-research-insights-and-recommendations>; DeVan L. Hankerson et al., Center for Democracy & Technology, Online and Observed 10-11 (2021), available at <https://cdt.org/insights/report-online-and-observed-student-privacy-implications-of-school-issued-devices-and-student-activity-monitoring-software>.

² Hankerson et al., *supra* note 1, at 10-11.

³ 47 U.S.C. § 254(h)(5)(B).

⁴ Hankerson et al., *supra* note 1, at 11-12; see Mark Keierleber, *Don't Get Gaggled*, The 74 (Oct. 18, 2020), <https://www.the74million.org/article/dont-get-gaggled-minneapolis-school-district-spends-big-on-student-surveillance-tool-raising-ire-after-terminating-its-police-contract>; see also Mark Keierleber, *An Inside Look at the Spy Tech That Followed Kids Home for Remote Learning*, The 74 (Sept. 14, 2021), <https://www.the74million.org/article/gaggle-spy-tech-minneapolis-students-remote-learning>.



During the meeting, CDT pointed out that CIPA does not require the invasive surveillance of students, and the Commission has the authority to clarify its interpretation. The Act does not define the term “monitoring” but includes an express “disclaimer” that “[n]othing” in the statute “shall be construed to require the tracking of Internet use by any identifiable minor or adult user.”⁵

Further, statements from around the time of CIPA’s passage suggest that the 106th Congress and its contemporaries understood that “monitoring” did not require technically sophisticated surveillance. During debate over CIPA, Sen. Patrick Leahy noted that “a lot of schools and libraries have found a pretty practical way” of monitoring students by having “their teachers, their parents, and everybody else . . . walking back and forth and looking over their shoulder saying: What are you looking at?”⁶ Similarly, in deciding a constitutional challenge to CIPA, the Eastern District of Pennsylvania described many libraries’ adoption of “monitoring implemented by a ‘tap on the shoulder’ of patrons perceived to be offending library policy.”⁷

Given the harms caused by student activity monitoring software and Congress’s intent that “monitoring” not entail tracking of students, CDT urged the Commission to clarify that “monitoring” is narrow and limited to the minimal amount of data collection needed to achieve CIPA’s goals, both on- and off-campus. For example, schools may limit the data they obtain by collecting only aggregate information whenever possible and minimizing where and when monitoring is occurring, such as by monitoring aggregate traffic on the school network, rather than over individual devices.

We urge the Commission to clarify CIPA’s monitoring requirement to ensure that student privacy is protected as we work together to close the homework gap.

Sincerely,

Elizabeth Laird
Director, Equity in Civic Technology, CDT

Cody Venzke
Policy Counsel, Equity in Civic Technology, CDT

Cc: William Davenport, Jr.
Autin Bonner
Gregory Watson

⁵ Consolidated Appropriations Act, 2001, Pub. L. 106–554, app. D, div. B, title XVII, sec. 1702(b), 114 Stat. 2763, 2763A–336 (2000), available at <https://www.congress.gov/bill/106th-congress/house-bill/4577>; 47 U.S.C. § 254 Note. As suggested by contemporaneous reports, “tracking” includes the gathering of data from activity online and connecting it with other data to make inferences about the user. See Federal Trade Commission, Online Profiling: A Report to Congress 3–6 (2000), available at <https://www.ftc.gov/sites/default/files/documents/reports/online-profiling-federal-trade-commission-report-congress-part-2/onlineprofilingreportjune2000.pdf>.

⁶ 146 Cong. Rec. S5823–45 (daily ed. June 27, 2000) (statement of Sen. Leahy), available at <https://www.congress.gov/congressional-record/2000/06/27/senate-section/article/S5823-8>.

⁷ *Am. Library Ass’n v. United States*, 201 F. Supp. 2d 401, 406 (E.D. Pa. 2002).

School Issued Devices & Student Activity Monitoring Software Research

Insights and Implications for the
Children's Internet Protection Act

Nov. 2021



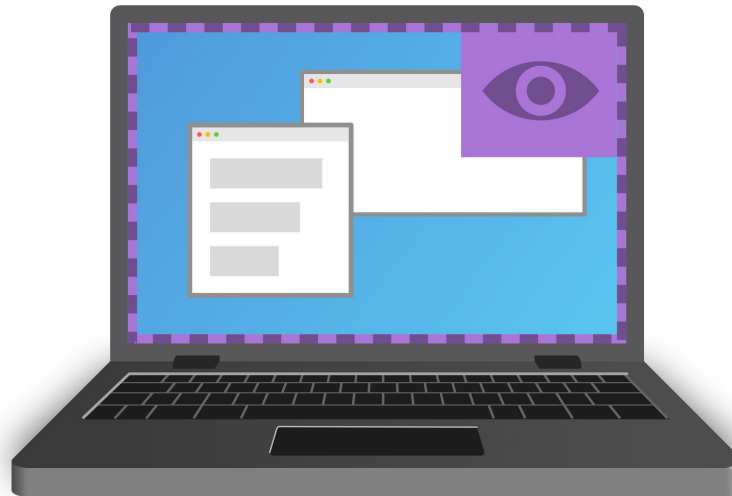


Today's Meeting

Agenda:

- Introductions
- What is student activity monitoring software?
- What is the current status of schools monitoring student activity?
- How can the FCC clarify the *monitoring* requirement of the Children's Internet Protection Act?
- Discussion

WHAT IS STUDENT ACTIVITY MONITORING?





Definition of “School-Issued Devices”

Over the past year and half, the distribution of school-issued devices (eg. laptops and tablets) has **expanded dramatically** (43% of schools pre-pandemic vs 95% as of February 2021).

CDT’s research focused on privacy implications for devices provided by schools and/or their families:

- **School-Issued Device:** “School-issued devices” refers to tablets or laptops provided by the district or school to students or families.
- **Personal Device:** “Personal devices” refers refers to laptops, desktops, or tablets that students or their families own.

Student Activity Monitoring Software



Definition of “Student Activity Monitoring”

Many types of technology collect information on students, all of which could be called "monitoring." We focused on two senses of the term:

- **Broadly:** any technology that collects data on individual students such as a learning management system logging when students use the system or a webapp scanning students' email messages.
- **Narrowly:** software on school-issued devices that allows for real-time features such as viewing students' screens or switching which applications they have open.



Potential Harms

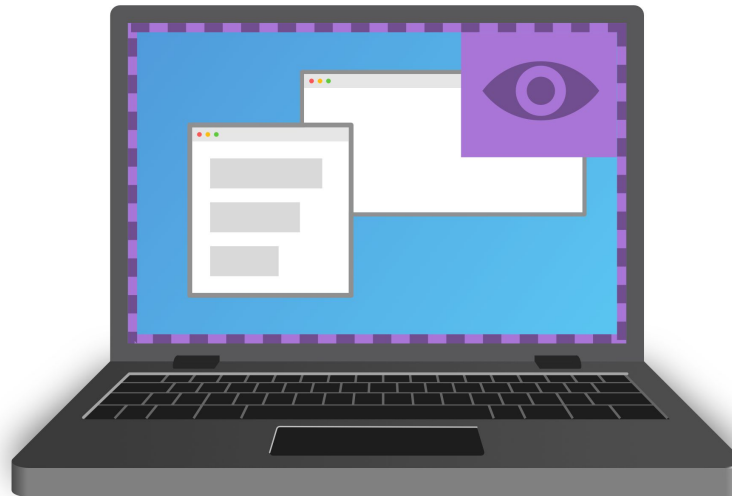
CPS teachers could look inside students' homes — without their knowledge — before fix

Baltimore City student laptops are monitored for mentions of suicide. Sometimes, the police are called.

Minneapolis School District Addresses Parent Outrage Over New Digital Surveillance Tool as Students Learn Remotely

Monitoring students on school laptops raises equity, privacy concerns

CURRENT STATUS OF STUDENT ACTIVITY MONITORING





Key Themes

*New CDT research utilizes **quantitative** data gathered through polls of teachers, parents, and students and **qualitative** data gathered from interviews with school technology leaders. It uncovered the following key themes:*

K-12 school usage of student activity monitoring software is **widespread**.

- District leaders cite perceived legal requirements under CIPA as a major reason for adoption.

Students in high-poverty districts may be subjected to **more monitoring** than students in wealthier districts, who are more likely to use personal devices.

- More extensive monitoring takes place on school-issued devices than on personal devices.

Students being monitored report a **chilling effect** on their online expression.

School communities mostly think **benefits outweigh the risks**, but still identify some concerns.

- Use of monitoring data for disciplinary purposes was identified as a prominent area of concern.



Monitoring Is Widespread



%

Student activity monitoring software is widely used in K-12 schools.

- **81%** of teachers report that their school uses some form of monitoring software.



%

Monitoring is taking place outside of school hours.

- Only **one in four** teachers whose school uses monitoring software reports that monitoring is explicitly limited to school hours.



Monitoring Disproportionately Affects Low-Income Students

Aa

Students using school-issued devices are **monitored to a greater extent** than their peers using personal devices.

If a student has their own device, [my view is that]... I'm not your parent, so I'm not going to monitor anything that you do on your own device.

— District administrator

%

Teachers report monitored use on:

- **71%** on school-issued devices
- **16%** on personal devices.

*[Students' online] traffic 24/7 is going through our web filter... There's no limitation on that. **If they're on our device, it doesn't matter what time of day or what day of the week** — their traffic is going through our web filter.*

— District administrator (emphasis added)



Monitoring Disproportionately Affects Low-Income Students

Aa

LEAs with wealthier student populations reported that their students are **more likely to have access to personal devices**, which are subject to less monitoring than school-issued devices.

%

Historically marginalized groups of students rely on school-issued devices:

- **66%** of rural students*
- **65%** of low-income students
- **64%** of Hispanic students
- **61%** of African American students

* All figures are statistically significant differences from the average for all students of 56%.



Monitoring Chills Student Expression



%

Students who are monitored express a chilling effect on their online expression.

- **Six in ten** agree with the statement, "I do not share my true thoughts or ideas because I know what I do online is being monitored."
- **80 percent** report being "more careful about what I search online when I know what I do online is being monitored."

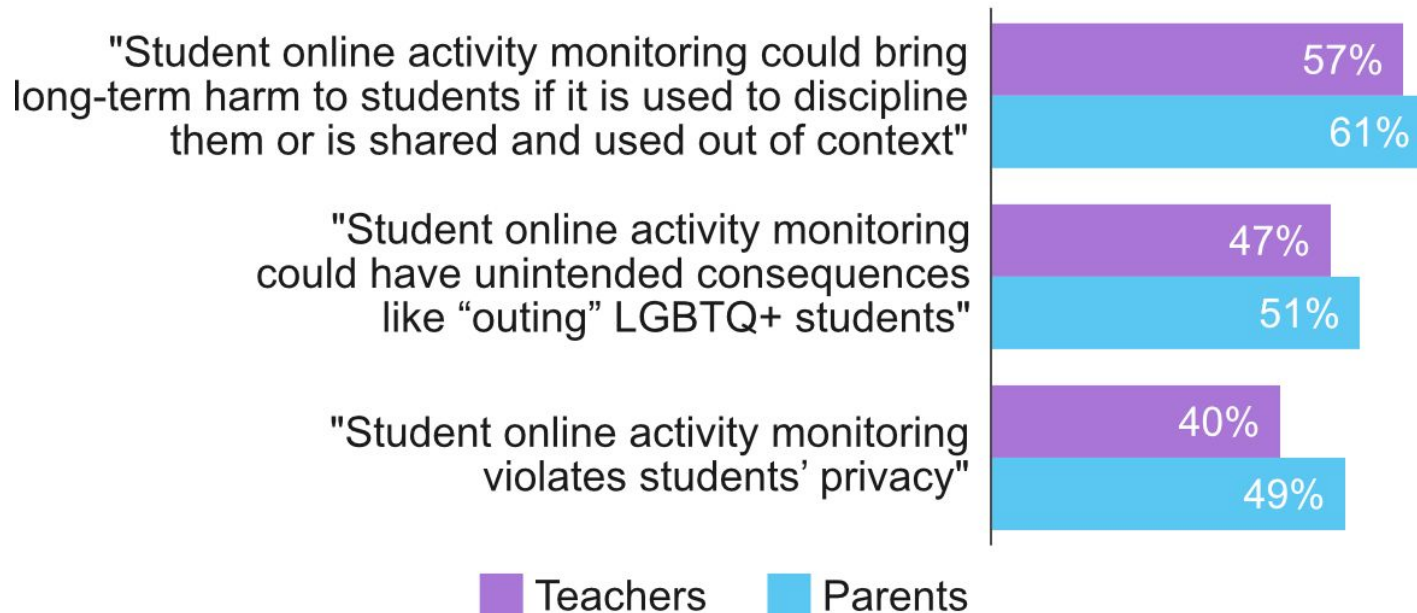


Monitoring Raises Concerns Among Parents and Teachers

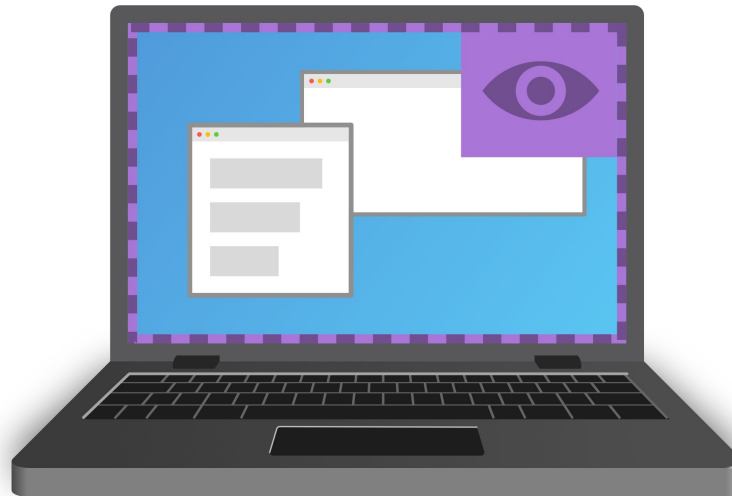
%

Parents and teachers also express privacy concerns around the use of these tools:

Teachers/parents agree that...



THE CHILDREN'S INTERNET PROTECTION ACT





The Children's Internet Protection Act

Aa

LEAs feel compelled to monitor student activity to **satisfy perceived legal requirements** and protect student safety.

The Children's Internet Protection Act states:

*[A] school board, local educational agency, or other authority with responsibility for administration of the school—(i) [must enforce] a policy of Internet safety for minors that includes **monitoring the online activities of minors** and the operation of a technology protection measure*

47 U.S.C. § 254(h)(5)(B)



How Broadly Should CIPA Be Interpreted?

The district officials' interpretation may be overbroad.

- Under CIPA, the term **“monitoring”** is not defined.
- **CIPA pre-dates** many of the algorithmic technologies now employed by the most concerning monitoring technologies.
- CIPA itself **includes a “disclaimer”** that “[n]othing” in the statute “shall be construed to require the tracking of Internet use by any identifiable minor or adult user.” 114 Stat. 2763, 2763A–336 (2000).



Recs. for Federal Leadership: Clarify CIPA Legal Reqs.

CDT Comments on the Emergency Connectivity Fund:

*[The Commission] should **clarify that the monitoring required by CIPA is narrow, community-centered, and limited to the minimal amount of data collection needed to achieve CIPA's goals**, both on- and off-campus. At minimum, the Commission should reiterate CIPA's "disclaimer" that "[n]othing" in the statute "shall be construed to require the tracking of Internet use by any identifiable minor or adult user."*

CDT Letter to House and Senate Commerce Committees:

*For example, schools may limit the data they obtain by **collecting only aggregate information** whenever possible and minimizing where and when monitoring is occurring, such as by monitoring aggregate traffic **on the school network, rather than over individual devices**.*

For CDT's Comments on the ECF, see <https://cdt.org/insights/cdt-urges-fcc-to-address-overbroad-monitoring-of-students-online-in-implementing-emergency-connectivity-fund/>.

For CDT's letter to the House and Senate Commerce Committees, see <https://cdt.org/insights/cdt-and-coalition-of-education-and-civil-rights-advocates-urge-congress-to-protect-student-privacy>.



CDT'S VISION

PUTTING DEMOCRACY AND INDIVIDUAL RIGHTS AT THE CENTER OF THE DIGITAL REVOLUTION

Equity in Civic Technology Project & CDT Research

- Provide **balanced advocacy** that promotes the responsible use of data and technology while protecting the privacy and civil rights of individuals.
- Create **solutions-oriented policy resources** that are grounded in the problems that currently confront policymakers, practitioners, and technology providers who work with them.
- Offer **technical guidance** that can be adapted and implemented by policymakers, practitioners, and the technology providers who support them.

Contact Us

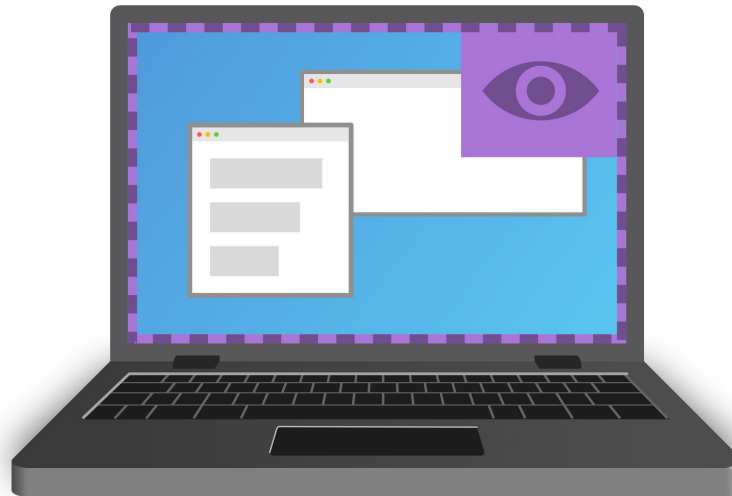
Center for Democracy & Technology

Elizabeth Laird
elaird@cdt.org

Cody Venzke
cvenzke@cdt.org



APPENDIX





CDT's Work on the Homework Gap and Student Privacy

- **Blog:** *Protecting Student Privacy in the Race to Close the Homework Gap*
- **CDT Comments on the Emergency Broadband Program**

CDT applauds the efforts of Congress and the Commission to close the homework gap and bridge the digital divide and offers these comments on how to connect students and families while protecting their privacy.

- **CDT Comments on the Emergency Connectivity Fund**
- **Convening** on the homework gap and student privacy
- **Brief:** *Closing the Homework Gap While Protecting Student Privacy*
- **Convening** of school districts on school-issued devices and student activity monitoring software.
- **Presentation:** STATS-DC, *Closing the Homework Gap While Protecting Student Privacy*
- **Research:** *Online and Observed and Student Activity Monitoring Software: Research Insights and Recommendations*
- **Letter:** CDT Calls for Congress to Clarify the Privacy Impacts of CIPA



CDT Original Research

Aa

Qualitative research based on interviews with technology administrators at five local education agencies, representing a diverse set of geographies and student bodies. Examined:

- How student activity monitoring software is used at the K-12 level
- How it impacts students who rely on school-issued devices compared to their peers who use their own personal

%

Quantitative research based on online surveys of 1,001 3rd-10th grade teachers, 1,663 K-12 parents, and 420 9th-12th grade students. Sought to:

- Measure teacher, parent, and student awareness of activity monitoring software and how it is used in schools
- Gauge attitudes towards student activity monitoring among these audiences.



Monitoring Disproportionately Affects Low-Income Students

%

Teachers who report that student activity monitoring software used by their school can...

Teachers: How Student Activity is Monitored			
School uses student activity monitoring software on →	School devices	Personal devices	School and personal devices
	<i>n=713</i>	<i>n=179</i>	<i>n=839</i>
Block obscene material (e.g. sex, alcohol)	65%	38%↓	61%
Track student logins to school applications	64%	37%↓	58%
View the contents of a student's screen in real time	56%	42%↓	54%
Monitor or flag key word searches (e.g. accessing information on self-harm)	52%	53%	52%
Block non-educational material (e.g. YouTube)	51%	28%↓	47%
Track student logins to other applications (e.g. personal/not school-related)	45%	54%↑	47%
Close browser tabs when a student is not on-task	30%	19%↓	28%
Take control of student input functionality (e.g. cursor, keyboard input)	16%	9%↓	15%
Not sure	2%	2%	2%

↑ Indicates significant differences between percentages at the 90% confidence level or above



How Broadly Should CIPA Be Interpreted?

Senator Leahy, objecting to the use of “programs,” and urging reliance on a “pretty practical way of doing this” during floor debate over CIPA:

*One has to assume not too many kids are going to go pulling up inappropriate things on the web sites when **their teachers, their parents, and everybody else are walking back and forth and looking over their shoulder** saying: What are you looking at? It is one thing if you are looking at NASA's home page. It is another thing if you are looking at wicked dungeons or something, if there is such a thing.*

146 Cong. Rec 5845-73 (daily ed. June 27, 2000)

Three-judge district court panel, describing non-technical practices:

*Some libraries have trained patrons in how to use the Internet while avoiding illegal content Other libraries have utilized such devices as . . . **monitoring implemented by a "tap on the shoulder" of patrons** perceived to be offending library policy.*

Am. Library Ass'n v. United States, 201 F. Supp. 2d 401, 406 (E.D. Pa. 2002)



Recs. for Federal Leadership: Clarify CIPA Legal Reqs.

CDT Comments on the Emergency Broadband Benefit Program:

*[W]e believe that the Commission should clarify the “monitoring” requirement of the Children’s Internet Protection Act (CIPA). . . . **[O]ver-broad surveillance is harmful and not required by the plain text of CIPA***

Sen. Warren’s Letter to Vendors of Student Activity Monitoring Software:

*As school districts look ahead, they must decide which safety tools and systems to use in order to protect student safety. . . . It is crucial that the tools school districts select will **keep students safe while also protecting their privacy**, and that they **do not exacerbate racial inequities and other unintended harms**.*

For CDT’s Comments on the EBBP, see <https://cdt.org/insights/cdts-comments-to-fcc-on-emergency-broadband-benefit-program>.

For Sen. Warren’s letter, see <https://www.warren.senate.gov/oversight/letters/warren-markey-blumenthal-raise-concerns-about-discriminatory-bias-in-edtech-student-surveillance-platforms-and-harmful-effects-on-students-mental-health>.